

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1197/1996

New Delhi, this 1st day of January, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Smt. Shanta Shastry, Member(A)

Surender Kumar

Wash Boy

Departmental canteen of Dr. RML Hospital
New Delhi

Applicant

(By Shri Sant Lal, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi

2. Medical Superintendent
Dr. RML Hospital
New Delhi

Respondents

(By Shri Madhav Panickar, Advocate)

ORDER

Hon'ble Smt. Shantha Shastry

The applicant in this case is mainly aggrieved by the manner in which his suspension period has been proposed to be treated after reinstatement by the respondents. He has, therefore, sought to quash the impugned notice dated 28.3.95 and to direct the respondents to regularise the periods from 3.6.88 to 4.1.90 and from 5.1.90 to 14.3.95 as the ones spent on duty for all purposes under the provisions of FR 54(2)/FR 54A(2)(i) read with Government of India's orders dated 3.12.85. He has further prayed for consequential benefits of pay and allowances, seniority and pay fixation etc.

2. The applicant was appointed as Wash Boy with effect from 18.9.80 in the departmental Canteen of Dr. RML Hospital, New Delhi. He was placed under suspension on

3.6.88 on ground of contemplated disciplinary proceedings. He was paid subsistence allowance @ Rs.360 per month. He was issued charge-sheet on 28.9.88. After completing the departmental enquiry he was finally dismissed from service vide memo dated 3/4.1.90 with effect from 5.1.90. He submitted an appeal on 26.2.90 against the order of punishment but there was no response. Applicant filed OA 2688/90 on 17.1.90 before this Tribunal against the punishment order. The said OA was allowed vide orders dated 4.12.92 with all consequential benefits on the sole ground of non-supply of a copy of the enquiry report. Respondents in turn filed SLP No.9924/93 against the said judgement in the Hon'ble Supreme Court. Civil Appeal No.5467/93 was allowed and after setting aside the order dated 4.12.92 of the Tribunal, the Hon'ble Supreme Court vide its order dated 11.10.93 remanded the case to the Tribunal for decision on other points raised in the OA. The Tribunal considered other points on merits and the OA was partly allowed as follows:

"34. Therefore, we allow this application in part to the extent of quashing the findings of the disciplinary authority that the charge under heading 'V.gross indiscipliine' is proved. For that reason we quash the order of penalty imposed by that authority. We hold that other charges other than III & V have been proved against the applicant. In the circumstances, we direct the respondents to reinstate the applicant within a period of one month from the date of service of this order. The competent authority should now impose an appropriate penalty other than termination of service in respect of charges proved against the applicant and also pass orders as to how the period from the date of suspension upto the date of dismissal and from the date of dismissal to the date of reinstatement should be regularised in accordance with the provisions of law within further period of one month.

"35. The appeal which is stated to be pending by the applicant will abate, if not already disposed of."

3. Applicant filed Contempt Petition No.34/95 on 3.2.95 against non-implementation of the order of the Tribunal within the time allowed. However, before the CP could come up for adjudication, the applicant was reinstated in service with effect from 15.3.95. The competent authority also passed the order vide Memo dated 25.3.95 imposing penalty of reduction in pay by three stages from Rs.786 to Rs.750 in the time scale of Rs.750-950 for three years. The contempt petition was also disposed of vide order dated 29.3.95. (12)

4. Respondents thereafter vide impugned notice dated 28.3.95 proposed to treat the entire period from 3.6.88 to 14.3.95 as 'non-duty' and to treat the period of suspension from 3.6.88 to 4.1.90 as extraordinary leave and restrict the pay and allowances to the extent of subsistence allowance already paid and also to treat the period from 5.1.90 upto the date of reinstatement on 15.3.95 as extraordinary leave without any amount of salary.

5. It is the contention of the applicant that according to FR 54(2) (4) and (7) which were quoted in the impugned notice dated 28.3.95, applicant was entitled to full pay and allowances during the said periods of suspension and prior to reinstatement.

6. Learned counsel for the respondents submits that FR 54(2) (4) and (7) are to be read alongwith FR 54A(2)(i). According to FR 54A⁽²⁾⁽ⁱ⁾ if the Government servant is not exonerated on merits, he shall, subject to provisions of sub-rule (7) of FR 54, be paid such amount (not being

the whole) of the pay and allowances to which he would have been entitled had he not been dismissed/removed etc. as the competent authority may determine, after giving notice to the government servant of the quantum proposed, only after considering the representation, if any, submitted by him in that connection. Since the applicant is not exonerated on merits, he shall not be entitled to full pay and allowances. The competent authority has given the impugned show cause notice to the applicant as per Rules to determine and regulate the period of suspension as well as the intervening period between his dismissal and reinstatement. (13)

7. Respondents have further stated that representation of the applicant dated 13.4.95 on the show cause notice was examined carefully and it was approved on the file by the competent authority that barring sanction of payment of an amount equal to subsistence allowance (Rs.360) and other admissible allowances for the period from 5.1.90 to 14.3.95 all other contentions made by the applicant were devoid of merit and may be rejected. However, due to certain unavoidable reasons, formal orders could not be issued to the applicant and in the meantime applicant filed the application before this Court.

8. Heard the learned counsel for both the parties. We have perused the relevant FR 54 and 54A alongwith sub-rules therein to have a correct appreciation of their implications. FR 54(1) lays down that the competent authority shall make a specific order in respect of a government servant dismissed/removed/compulsorily retired and reinstated in regard to his pay

and allowances for the period of absence from duty including the period of suspension preceding dismissal/removal etc. as the case may be and whether or not the said period shall be treated as period spent on duty.

9. FR 54(2) refers to case of a government servant who has been reinstated after being exonerated fully. FR 54(4) refers to cases of those covered under sub-rule (2) including cases where the order of dismissal, removal or compulsory retirement is set aside by the authorities concerned solely on the ground of non-compliance of the requirement of the constitution and where no further inquiry is proposed to be held. FR 54(7) states that amount determined under the proviso to sub-rule (2) or sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under Rule 53.

10. Whereas rule 54(a)(i) states that where a government servant has been reinstated after setting aside of the dismissal/removal etc. the period of absence shall be regularised and his pay and allowances shall be in accordance with provision^{of 4} to sub-rule (2) or (3).

11. Rule 54(A)(2)(i) lays down that if the government servant is not exonerated on merits, he shall, subject to provisions of sub-rule (7) of FR 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed/removed etc. as the competent authority may determine, after giving notice to the government servant of the quantum proposed, only after considering the

representation, if any, submitted by him in that connection. The period intervening between the date of dismissal/removal/compulsory retirement including the period of suspension and the date of the judgement of the court, shall be regularised in accordance with the provisions contained in sub-rule (5) of Rule 54. According to sub-rule (5), the period of absence from duty including the period of suspension shall not be treated as the period spent on duty unless the competent authority specifically directs so for any specific purpose.

12. A reading of FR 54 and FR 54(A) alongwith the sub-rules thus shows clearly that if a government servant is not exonerated fully he will not be entitled to full pay and allowances on his reinstatement, nor is it necessary to treat the period of suspension as on duty. The pay and allowances and treatment of period of suspension have to be determined by the competent authority after giving notice to the government servant. Respondents have issued the impugned notice according to rules. However, they have apparently not quoted the correct rule in the impugned notice dated 28.3.95. It should be Rule 54(A)(2)(i) and not 54(2) as cited therein. However, it is settled law that merely not quoting the correct rule will not vitiate the impugned notice.

13. We find from the judgement of the Tribunal dated 7.10.94 in OA 2688/90 that the Tribunal clearly held that "the charges under heading No.V are not proved. Nevertheless, the applicant is guilty of other charges". In the circumstances, the disciplinary authority could impose appropriate penalty other than termination of

service in respect of charges proved against the applicant. The disciplinary authority accordingly imposed the necessary penalty in the matter. Thus it is clear that the applicant was not fully exonerated. This being so, this case is covered by FR 54A(2)(i). Keeping this in view, action of the respondents in issuing impugned show cause notice dated 28.3.95 cannot be faulted. Further, in view of the statement made by the respondents in the counter, it appears that a decision has been taken to sanction an amount equivalent to subsistence allowance of Rs.360 and other admissible allowances for the entire period of suspension as well as the intervening period between his dismissal and reinstatement, i.e. the period from 5.1.90 and 14.3.95. Thus the respondents are willing to pay amount equivalent to subsistence allowance even for the period between dismissal and reinstatement. However, the respondents have not issued necessary formal orders. Therefore, they are directed to issue the final orders within a period of one month from the date of receipt of a copy of this order.

14. In view of the observations made hereinabove, we do not consider it necessary to interfere with the action of the respondents in this matter. In the result the OA is dismissed. No costs.

Shanta Shastri

(Smt. Shanta Shastri)
Member(A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

/gtv/